

68948-8

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No. 68942-8-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Appellant,

v.

JOSEPH A. PELTIER,

Respondent.

2013 FEB 28 PM 4: 56

~~COURT OF APPEALS DIV I~~
STATE OF WASHINGTON
FILED

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Anita L. Farris

BRIEF OF RESPONDENT

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WASHINGTON APPELLATE PROJECT
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A. ISSUES ON APPEAL

1. Did the trial court act within its discretion in dismissing the amended information based on the expiration of the statute of limitations?

2. Did the trial court properly reject the State's motion to reconsider its ruling dismissing on statute of limitations grounds?

B. STATEMENT OF FACTS

In 2003, and as part of a plea agreement, Joseph Peltier and the State stipulated to a bench trial on agreed documentary evidence on an amended information charging a count of third degree rape and a count of indecent liberties for incidents that occurred in 1993 and in 1995 respectively. CP 113-23. In the stipulation, Mr. Peltier waived the following rights:

The defendant has the following rights: (a) trial by jury; (b) at trial confront and listen to the testimony of the witnesses against defendant and to cross-examine witnesses; (c) at trial to call witnesses for the defense at no expense to the defendant; (d) for the defendant to testify in his/her defense at trial; (e) the right to appeal a finding of guilt.

CP 113-14. Mr. Peltier subsequently formally waived his constitutional rights and agreed to the stipulation at a hearing. CP Sub. No. ____, Sub No.74 at 4-7. Based upon the stipulated evidence, the

trial court found Mr. Peltier guilty of the two offenses. CP 111-12. The court sentenced Mr. Peltier to 77 months in custody. CP 94-95; 101.

After completing the sentence imposed, Mr. Peltier filed a personal restraint petition (PRP), challenging his convictions on the basis that the statute of limitations had expired prior to his conviction. CP 92. The State conceded the statute of limitations had expired. CP 93.

The State concedes that the third degree rape and indecent liberties are subject to the three-year statute of limitations. The State also concedes that when a crime is barred by the statute of limitations, the resulting judgment is invalid on its face and the time bar of RCW 10.73.090 does not apply. *In re Pers. Restraint of Stoudmire*, 141 Wn.2d 342, 353-54, 5 P.3d 1240 (2000). Because the statute of limitations barred prosecution here, the sentencing court exceeded its authority and Peltier's restraint on these charges resulted in a complete miscarriage of justice. *Id.* at 355.

CP 93.

After conceding error, the State filed a Second Amended Information charging Mr. Peltier with one count of second degree rape of a child and one count of second degree child molestation for acts occurring in 2001, and two counts of second degree rape for acts occurring in 1995 and 1993 involving a different victim from the child

sex counts. CP 89. Mr. Peltier moved to dismiss this new information submitting that the court lacked jurisdiction over these offenses as they were filed after the statute of limitations had expired. CP 65-71.

Following a hearing, the trial court agreed and dismissed the Second Amended Information.

So the question is, is the statute of limitations in this case, in any criminal case, jurisdictional such that it can or cannot be waived when the parties are entering into their plea negotiations? I have to say that in reviewing all of the cases that were cited, I have to disagree with the State in the sense that I don't think that the case law at this point in time is unclear. I think the cases, in reading them, holding that, in fact, the statute of limitations is jurisdictional. I think *Stoudmire* was quite clear and in fact dealt with plea negotiations and indicated that plea bargaining agreements cannot exceed the statutory authority given to the court and specifically held that because the statute of limitations bars prosecution of charges commenced after the period proscribed in the statute, the sentencing court cannot exceed its authority. I think it's a fairly clear statement.

...

And so I don't believe that under these circumstances it can somehow be resurrected as if it hadn't gone through the machinations that it has gone through in this case. And so I don't believe that argument would withstand legal scrutiny under the current state of the law as well.

So while I think it's a difficult result, I feel that I have to be bound by the law as I understand it. So I am going to grant the defense motion to dismiss.

RP 17-19.

The State moved the trial court to reconsider its ruling which the court denied. CP 4-5. The State appeals. CP 1.

C. ARGUMENT

THE TRIAL COURT PROPERLY RULED THE
SECOND AMENDED INFORMATION WAS
BARRED BY THE STATUTE OF LIMITATIONS

1. The statute of limitations is jurisdictional. Mr. Peltier was charged and sentenced to a count of third degree rape and a count of indecent liberties. The statute of limitations for third degree rape and indecent liberties is three years. RCW 9A.04.080(1)(h).¹

The purpose of a statute of limitations is to limit exposure to criminal prosecution to a certain fixed period of time following the occurrence of those acts the [L]egislature has decided to punish by criminal sanctions. Such a limitation is designed to protect individuals from having to defend themselves against charges when the basic facts may have become obscured by the passage of time and to minimize the danger of official punishment because of acts in the far-distant past. Such a time limit may also have the salutary effect of encouraging law enforcement officials promptly to investigate suspected criminal activity. For these reasons and others, we have stated before “the principle that criminal limitations statutes are ‘to be liberally interpreted in favor of repose. . . .’”

Toussie v. United States, 397 U.S. 112, 114-15, 90 S.Ct. 858, 25

L.Ed.2d 156 (1970), *quoting United States v. Habig*, 390 U.S. 222, 227,

88 S.Ct. 926, 19 L.Ed.2d 1055 (1968).

¹ RCW 9A.04.080(1)(h) provides in relevant part: “No other felony may be prosecuted more than three years after its commission[.]”

The statute of limitations in a criminal case is jurisdictional and creates an absolute bar to prosecution. *State v. Glover*, 25 Wn.App. 58, 61, 604 P.2d 1015 (1979). *Accord State v. Dash*, 163 Wn.App. 63, 259 P.3d 319 (2011); *State v. N.S.*, 98 Wn.App. 910, 914-15, 991 P.2d 133 (2000).

Unlike the situation in civil cases, a criminal statute of limitations is not merely a limitation upon the remedy, but is a “limitation upon the power of the sovereign to act against the accused.” *State v. Fogel*, 16 Az.App. 246, 248, 492 P.2d 742, 744 (1972).

...

An indictment or information which indicates the offense is barred by the statute of limitations fails to state a public offense . . . It is not subject to amendment and must be dismissed.

Glover, 25 Wn.App. at 61-62.

Because a criminal statute of limitations is jurisdictional, unlike the statute of limitations in a civil action, it cannot be waived. *State v. Walker*, 153 Wn.App. 701, 705, 224 P.3d 814 (2009); *Glover*, 25 Wn.App. at 61-62. *See also State v. Phelps*, 113 Wn.App. 347, 357, 57 P.3d 624 (2002) (defendant could not agree to extend criminal statute of limitations period).

The trial court’s ruling on the motion to amend the information is reviewed for abuse of discretion. *State v. Lamb*, 175 Wn.2d 121, 130, 285 P.3d 27 (2012). Similarly, this Court will not reverse the

superior court's ruling on the motion to reconsider absent an abuse of discretion. *Peterson v. Kitsap Community Federal Credit Union*, ___ Wn.App. ___, 287 P.3d 27, 33 (2012).

Based on the clear and unwavering pronouncements that the statute of limitations is a jurisdictional bar that cannot be waived, the trial court did not abuse its discretion in granting Mr. Peltier's motion to dismiss the Second Amended Information.

2. The trial court properly ruled it lacked jurisdiction because of the expiration of the statute of limitations. The State contends that by pleading guilty, Mr. Peltier thereby waived any challenge to the statute of limitations. The State contends the Washington cases dealing with the statute of limitations deal only with a forfeiture of the right by the defendant, not waiver by the defendant. The State is incorrect and its argument should be rejected as contrary to Washington law.

In *In re the Personal Restraint of Stoudmire*, the defendant pleaded guilty to two counts of indecent liberties. 141 Wn.2d 342, 347, 5 P.3d 1240 (2000). The defendant subsequently filed a personal restraint petition seeking to overturn these convictions on the basis that the statute of limitations had expired prior to entering his guilty pleas. *Id.* at 354. The State argued, as it does here, that by pleading guilty, the

defendant had waived any challenge to the convictions. *Id.* The Supreme Court disagreed. *Id.* at 355. The Court noted that, although one waives many things when pleading guilty, a plea agreement “cannot exceed the statutory authority given to the courts of this State.

Id.

Because the statute of limitations bars prosecution of charges commenced after the period prescribed in the statute, the sentencing court exceeded its authority.

Id. By accepting the defendant’s guilty plea to offenses that were barred by the statute of limitations, the trial court exceeded its authority, which resulted in a miscarriage of justice. *Id.* See also *Phelps*, 113 Wn.App. at 357 (“Although Phelps agreed to the extension [of the statute of limitations], he cannot grant the court authority to punish him more severely than the sentencing statutes allow.”).

Contrary to the State’s assertion that Washington cases only involve forfeiture of the right, not waiver, the defendant in *Stoudmire*, as did Mr. Peltier, pleaded guilty then sought to dismiss the resulting convictions in a PRP based on the expiration of the statute of limitations. In granting the PRPs, the Supreme Court ruled that the plea bargain to charges for which the statute of limitations expired exceeded the trial court’s authority. 141 Wn.2d at 354-55. Implicit in

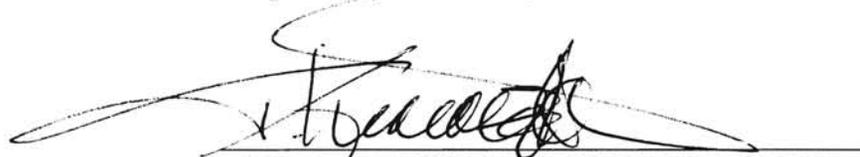
this ruling is that the statute of limitations cannot be waived because the trial court lost jurisdiction once the statute of limitations expired. The State's argument should be rejected.

D. CONCLUSION

For the reasons stated, Mr. Peltier respectfully requests this Court reject the State's arguments and find the trial court properly dismissed the Second Amended information as it exceeded the statute of limitations.

DATED this 27th day of February 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Kummerow', is written over a horizontal line. The signature is stylized and cursive.

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DIVISION I**

STATE OF WASHINGTON,)	
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Appellant,)	
)	NO. 68942-8-I
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JOSEPH PELTIER,)	
)	
Respondent.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF FEBRUARY, 2013, I CAUSED THE ORIGINAL **BRIEF OF RESPONDENT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

- | | | | |
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SIGNED IN SEATTLE, WASHINGTON, THIS 28TH DAY OF FEBRUARY, 2013.

X _____
